

Surface Water Resources

Since 1895, Nebraska has had an administrative system overseeing the orderly use of the State's surface water resources. The **Nebraska Department of Natural Resources** (DNR) is the State agency authorized by Nebraska statutes to regulate surface waters. **All diversions of surface water for irrigation, hydropower, industrial use, municipal use, domestic use, storage and other uses require a State permit.** Recently, authority of the DNR was broadened to include instream uses for recreation; fish and wildlife; induced ground water recharge for public water suppliers; and diversions by ground water irrigation wells located within 50 feet of the bank of the channel. Each permit has certain limitations and conditions associated with it. **This publication is limited to discussion of natural flow permits granted to divert water from Nebraska's streams.**



Point of Diversion

The point of diversion may be a pump location or a headgate. In either case, there is a described location given in the permit where water may be diverted from a stream. Some permits may have several approved diversion points. To change the point of diversion to somewhere other than the location specified in the permit, the permit holder must file a petition with the DNR to relocate. Approval must be received prior to relocation. Relocations may occur within the same 40-acre government subdivision without approval from the DNR as long as impairment does not occur to other appropriators. Any relocation that harms other appropriators cannot be approved.

Amount of Water

Permits are limited as to the amount of water that may be withdrawn, stored, or used. For permits to withdraw water from streams, both the diversion rate and the total annual volume that can be diverted are usually defined.

By law, the rate of diversion for irrigation cannot exceed one-seventieth of a cubic foot per second (cfs) per acre. (This is also stated as one cfs per 70 acres.) To convert cfs to gallons per minute (gpm), multiply by 448.8. Someone with a permit to irrigate 70 acres usually receives the right to divert one cfs or 449 gpm. Someone irrigating 35 acres usually receives a permit for 0.50 cfs or 224 gpm. However, within the last 100 years, different standards were established by law and some permits were granted instantaneous rates of less than one-to-seventy. A recently enacted law allows irrigation districts and companies to seek modification of existing permits in order to achieve a greater rate of diversion than one-to-seventy. Unless that modification has been approved, no acre of land may receive more than

one-seventieth of a cfs under a single natural flow permit or combination of natural flow permits.

Permits are also conditioned by law as to the maximum amount of water that can be withdrawn on an annual basis. Most irrigation permits are held to a three acre-feet per acre limitation.

The amount of water diverted for both the instantaneous rate and the annual volume is measured at the point of diversion from the stream, not at the location of use.

Location of Use

The location of use is usually described within the permit and, in most cases, a map is filed as part of the permit. The map indicates the exact location of use approved by the permit. For irrigation permits, increase in the number of acres or a change in their location requires approval from the DNR. Water rights are a property right that attach to the land and cannot be moved without formal action of the DNR.

Other Conditions

Some permits are conditioned as to the time of year use can occur and under what situations diversions can occur. Permits describe the type of use to be made under the permit. Failure to use water as allowed under the permit for more than three consecutive years causes the permit to be subject to cancellation. There are excusable reasons for nonuse described in the law. Each permit is unique and must be read to determine exact rights associated with each.



ADMINISTRATION OF PERMITS

The DNR administers surface water appropriations in accordance with the priority and limitations of the rights granted. To fulfill this duty, DNR has offices located across the state. The location, address and telephone numbers of these offices, as well as the main office in Lincoln, are listed on the back of this brochure. Permit holders who have questions regarding their permits are encouraged to contact DNR personnel at one of these locations.

Administration of water rights is necessary to assure that all water is being used to the most beneficial use allowed under Nebraska law. Proper administration allows for new permits to be granted for new uses when water is available. Holding all permits to the amount of the appropriation assures junior permit holders that they will be allowed to divert water until a natural shortage occurs. During times of shortage, junior (new priority) permits must be denied water so that senior (old priority) permits may receive the full amount of their permits.

For irrigation permits where the diversion rate is so small that a proper distribution and application is impossible, Nebraska statutes allow for a greater rate of diversion for a limited time. The greater rate must be limited so that the volume of water used within a 24-hour period does not exceed the amount of water that would otherwise be allowed at the approved fixed continuous rate for a 24-hour period or, the volume of water used in a 7-day, Monday-through-Sunday period does not exceed the amount of water that would otherwise have been allowed at the approved fixed continuous rate for a 7-day period. To allow a greater rate,

PERMITS

Priority Dates

Every permit has a priority date usually based on the date the application for a permit was filed with the DNR. There are some statutory exceptions. Water distribution in Nebraska is based on "first in time is first in right." Priority dates set the value of the right, the older (*senior*) the priority date, the better the right. During times of shortage, newer (*junior*) water rights are denied water to satisfy the needs of older water rights.

DNR must find that doing so will not impair the rights of other permit holders. To determine the hours or days of operation, a simple ratio system is used. The permitted rate (pr) is divided by the operating rate (or) and this quotient is multiplied by 24 to calculate the number of hours each day that diversion is allowed if a daily routine is to be established; or is multiplied by 7 to calculate the number of days each week that is allowed if a weekly rotation is to be established.

$$\frac{pr}{or} \times 24 = \text{hours of diversion allowed each day}$$

OR

$$\frac{pr}{or} \times 7 = \text{days in a week diversion is allowed}$$

DNR staff usually set specific hours or days that the permit holder can divert water. By staggering hours or days, several permits may be satisfied within a stream reach without depleting the stream.

Acreage Reports

At the DNR's discretion, permit holders may be required to submit a report indicating the extent of irrigation use planned under each permit each year. The report is initiated by the DNR and sent to permit holders. Typically the report also requests the current owner's name and the identity of farm managers or tenants. If required, acreage reports are sent out in January, and are to be completed and returned to the DNR by April 1. Failure to file an acreage report results in the permit holder being denied the right to divert water.

Notices

When regulating water use, notices are mailed, telefaxed, telephoned, or personally delivered to the permit holder. There are **three types of notices**. The **first type** is a regulating notice. This notice specifies what amount of water may be diverted under each permit. The amount

of water may be less than the permitted amount based upon the capacity of the diversion facility, the annual acreage report, or the amount of water available. The **second type** of notice is a closing order. This denies the permit holder the right to divert for reasons such as insufficient water, failure to file an acreage report, or irrigation of lands not under the permit. The **third type** of notice is an opening order that may be issued when water supplies increase or when needed permits or modifications to permits have been granted.

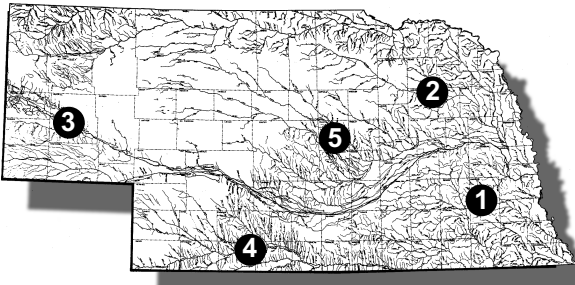
Meters

The DNR can require any appropriator to install a measuring device on any diversion facility when needed for proper water distribution. Most canals have measuring devices and in several areas pumps are required to have meters.



ILLEGAL DIVERSIONS

Under Nebraska law, anyone who uses, or allows to be used, surface water for any purpose, without authority from the DNR shall, if convicted, be guilty of a Class II misdemeanor. Each day that water is allowed to run without authority from the DNR constitutes a separate offense. The penalty for a Class II misdemeanor is a maximum of six months imprisonment or one thousand dollars fine, or both.



**Department of Natural Resources
Office Locations**

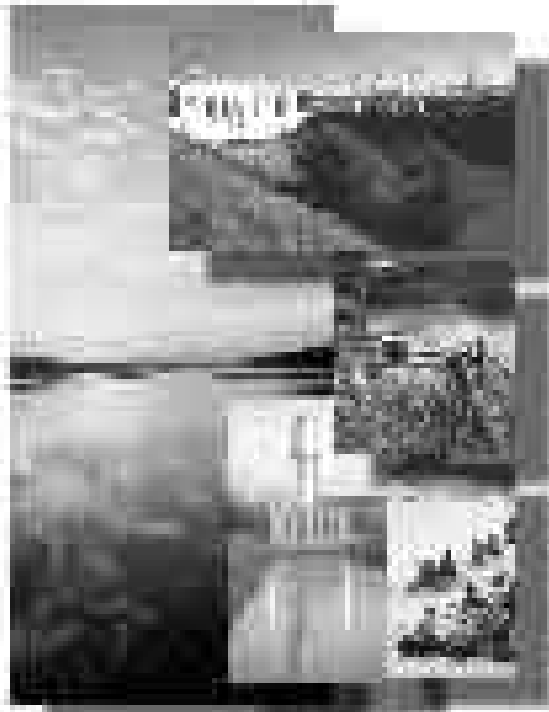
- ① **Lincoln Office (Main)**
301 Centennial Mall South, Fourth Floor
Lincoln, NE 68509
(402) 471-2363
- ② **Norfolk Office**
601 East Benjamin Ave., Suite 101
Norfolk, NE 68701
(402) 370-3377
- ③ **Bridgeport Office**
729 Main Street
Bridgeport, NE 69336
(308) 262-1930
- ④ **Cambridge Office**
622 Patterson
Cambridge, NE 69022
(308) 697-3730
- ⑤ **Ord Office**
North Highway 11
Ord, NE 68862
(308) 728-3325

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**SURFACE
WATER
ADMINISTRATION
for
Natural Flow
Permits**



State
of
Nebraska
Department
of
Natural Resources